

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

PLAINTIFF

VS

CIV. NO. 3:16-CV-00769 HTW-LRA

DANNY’S RESTAURANT, LLC, et al.,

DEFENDANTS

**RESPONSE IN OPPOSITION TO MOTION TO AMEND COMPLAINT
OR, ALTERNATIVELY, REQUEST FOR CONTINUANCE AND TO
REOPEN DISCOVERY**

Plaintiff has moved to amend the complaint to add the formal claim of successor liability. Although Defendant objects to the amendment, nevertheless, should this Court allow the amendment, Defendant requests this Court grant a continuance of the trial and permit reopening of discovery.

I. Objection to Amendment

Defendant hereby reiterates and incorporates the objections to Plaintiff’s amendment set for the in its Memorandum in Support of Motion to Dismiss, which precipitated the Plaintiff’s amendment.

II. Request for Continuance and To Reopen Discovery

Should this Court allow the filing of the Amended Complaint, Defendant moves for reciprocity *via* a continuance of the trial and the taking of further discovery to permit development of the facts in support of its defense. Further discovery will be necessary on the elements of successor liability plead in the amended complaint. While Plaintiff may have investigated the successive liability claim it intended to present but failed to plead, Defendant was not on notice to defend, and did not pursue discovery on these elements. The claim was not pled, and was therefore not defended. If it is to be allowed at this stage, discovery and a delay will be required. *See, e.g., Smith v. EMC Corp.*, 393 F.3d 590, 596 (5th Cir. 2004) (“A defendant is prejudiced if an added claim would require the defendant “to reopen discovery and prepare a defense for a claim different from the [one] ... that was before the court.”); *and Lockheed Martin Corp., v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) (“A need to reopen discovery and therefore delay the proceedings supports a district court's finding of prejudice...”). Otherwise the amendment should not be allowed.

For these reasons, Defendant objects to Plaintiff’s Motion to Amend its complaint, and in the alternative, requests a continuance and to reopen discovery in the event amendment is allowed.

RESPECTFULLY SUBMITTED, this the 30th day of June, 2018.

/s/ Bradley S. Clanton
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CERTIFICATE OF SERVICE

I, BRADLEY S. CLANTON, do hereby certify that I have this day electronically filed notice of the foregoing pleading with the Clerk of Court using the Court's ECF system, which sent notification of such filing to the Plaintiff's Counsel of Record.

THIS the 30th day of June, 2018.

/s/ Bradley S. Clanton
Bradley S. Clanton